

Position of Bear Creek Council in Opposition to SB - 417
January 12, 2009

Bear Creek Council, based in Gardiner, MT, is a local conservation group representing our 70 members. We work to protect our community and the integrity of the environment that supports it. Since our founding in 1983 we have been engaged with numerous state actions covered by the Montana Environmental Policy Act (MEPA).

MEPA is Montana's bedrock environmental law. In its simplest terms, MEPA institutes a "look before you leap" policy by requiring state agencies to consider the environmental, social, cultural and economic impacts of proposals like mines, power plants, sewers, landfills, and timber sales before the project is approved. The purpose of MEPA is to foster state government decisions that are informed, accountable, open to public participation, and balanced. MEPA has resulted in state agencies making better decisions based on community concerns for 38 years.

The MEPA process is often the only opportunity the public has to provide input on state agency decisions. Air quality and water quality laws are very limited in scope. MEPA is the only process that requires state agencies to consider the broad array of potential or cumulative impacts a project could have on such things as cultural resources, fish and wildlife, or community safety. Such community issues often involve consideration of traffic and safety issues, like what time of day large trucks can drive by a school or whether it is necessary to provide fencing in between a playground and a rail yard, or whether a road should be paved to keep the dust down for area residents. MEPA gives a community the ability to provide input into decisionmaking and help resolve issues before they become a problem. No other law allows consideration of such issues.

Because SB 417 removes the ability to sue under MEPA, the public will have no recourse if an agency does a poor job complying with MEPA. In fact, the public will have no recourse if a state agency decides not to follow MEPA at all. For example, if an agency chooses not to allow the public to comment on an environmental assessment or an environmental impact statement, the public will not be able to do anything about it. Citizens don't often sue over agency MEPA decisions, but the possibility of a lawsuit does serve as a deterrent for agencies that might otherwise do a poor job of complying with the law.

MEPA requires agencies to collect accurate information about a project's impacts and allows public participation in state environmental decision-making. Under SB 417, if agencies use shoddy information or ignore or short-change public participation there will be no consequences.

Litigation based on MEPA isn't out of hand. During MEPA's first 36-years (through 2007), there were only 39 lawsuits based on MEPA while over 39,000 state actions that have been reviewed under MEPA.

Under SB 417, agencies could shortcut the MEPA process at the Environmental Assessment (EA) phase by making unwarranted "Findings of No Significant Environmental Impact" despite facts that indicate either significant impacts or significant scientific uncertainty, thus necessitating a full Environmental Impact Statement (EIS)—with no consequences.

Under SB 417, there is no incentive for companies to cooperate with agencies in the preparation of environmental reviews because regardless of the quality of that review, agencies will be required to issue a permit

Under SB 417, agencies could avoid meaningful and honest environmental review of state actions, including use of inaccurate or dated information, and simply ignoring relevant impacts—with no consequences.

SB 417 enables an agency to ignore information and science and be unresponsive to public input—with no consequences. The result will be shoddy decision-making, increased litigation based on our constitution, and frustration from all segments of the public.

SB 417 says that the purpose of an environmental analysis under MEPA is to inform the legislature about the adequacy of environmental laws. This wholly and fundamentally shifts the purpose of MEPA from a process that informs the public and decision makers about the impacts of state agency actions to one that only helps the legislature decide if environmental laws are working. Worse, it potentially makes every agency permit decision a political decision rather than one based on data and science. MEPA isn't about helping determine if other environmental laws are working. Whether existing environmental laws are adequate is not even a part of the MEPA review process.

MEPA is about giving the public a voice in the decision-making process. SB 417 eliminates all references to MEPA being used for decisionmaking. MEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster good decision-making by agencies and to lead agencies toward actions that protect the environment.

MEPA facilitates the ability of state agencies to make better decisions: Better decisions are balanced decisions. Balanced decisions maintain Montana's clean and healthful environment without compromising the ability of people to pursue their livelihoods

Better decisions are accountable decisions: accountable decisions clearly explain the agency's reasons for selecting a particular course of action.

Better decisions are made with public participation: MEPA requires agencies to open government decisions for public scrutiny.

SB 417 removes the accountability of agencies in their decisionmaking processes for projects. Where critics see delay, others see deliberation. Where they see postponed profits, others see public input. Where they see frivolous litigation, others see citizens requiring their government to live up to its responsibilities. And where they see a barrier to development, others see a shield that protects all Montanans including sponsors of projects such as the ill conceived Highwood power plant from their own or the bureaucracy's shortsightedness.

Vote 'No' on SB 417

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